In the
Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1170

WILLIAM JAMES BIBBS, IVORY LEE WILSON,
AND ROSCOE WILSON,

Petitioners

versus

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

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The Petitioners, William James Bibbs, Ivory Lee Wilson and Roscoe Wilson, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered December 19, 1977, affirming Petitioners' convictions in the United States District Court for the Middle District of Florida for violations of 18 U.S.C., Sections 2 and 1584.

OPINIONS BELOW

The opinion of the United States Court of Appeals, December 19, 1977, affirming the judgment of the District Court is set out in the Appendix, infra, pp.A-1 -A-14. The Order of United States Court of Appeals, entered January 18, 1978, denying the petition for rehearing is set out in the Appendix, infra, p. A-15.

JURISDICTION

This Petition is brought under Rule 19(1)(b), Rules of the Supreme Court of the United States, and 28 U.S.C. 1254(1), investing this Court with jurisdiction.

QUESTIONS PRESENTED

1. Can a defendant be convicted of holding a person to involuntary servitude if the victim has admitted opportunities to leave but claims he is afraid to do so?

2. Is it proper for the Government to impeach a key defense witness by use of inconsistent hearsay statements made subsequent to trial testimony, without first recalling the witness and confronting the witness with the inconsistent statement?

3. Where a main issue is whether or not an individual is so intimidated by threats that his will is completely subjugated, is it error to exclude evidence of past criminal convictions, more than ten (10) years old?

4. Did the United States Court of Appeals for the Fifth Circuit depart from the accepted and usual course of judicial proceedings where their opinion reflects certain objections were not made at trial and the record clearly reflects such objections were made?

RULES, STATUTES, AND REGULATIONS INVOLVED

1. Title 18, United States Code, Section 1584, provides as follows:

> Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 773.

2. Rule 613(b), Federal Rules of Evidence, provides:

> (b) EXTRINSIC EVIDENCE OF PRIOR INCONSISTENT STATEMENT OF WITNESS. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

3. Rule 609(b), Federal Rules of Evidence, provides:

> (b) TIME LIMIT. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evi-

dence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

STATEMENT OF THE CASE

The Petitioners were convicted of holding certain persons to involuntary servitude in contravention of 18 U.S.C., Section 1584.

Testimony at trial indicated that:

1. All the alleged victims shared an apartment in Ivory Wilson's apartment complex in Lake Wales, Florida (TB-67)[1]

2. All of the alleged victims admitted during trial to opportunities to leave but indicated they were afraid to do so. (TB-65; TB-53; T-51; T-78; T-139; T-173)

3. All of the alleged victims were at one time or another away from the defendants, in town or at the doctor but still did not leave. (TB-29; TB-78; TC-144; TB-75; TC-143; TC-228; TC-56; TD-556)

One of the key defense witnesses was Janet Boyd who was the cook employed by Ivory Wilson at Benson, North Carolina (TD-40). She was a resident of Lake Wales, Florida, and

1. Throughout this Petition, references to the record of trial below shall be designated by "T", followed by the appropriate volume and page numbers. "T" with no letter refers to unnumbered transcript.

often visited with employees who lived at the Wilson apartments (TD-53). During the period in Lake Wales, Mrs. Boyd frequently visited her Aunt's home, a short distance from the apartments (TD-53). She was acquainted with most of the alleged victims and testified that they were properly fed (TD-42), and freely left the North Carolina facilities as well as the Florida apartments (TD-62). She stated that she observed some of the alleged victims in downtown Lake Wales (TD-556,56), did not observe any abuse of employees (TD-62) and never heard of any threats or mistreatment (TD-62).

When Defendants closed their case the Government called Ray Coleman in rebuttal. He testified over objections (TF-159), that Janet Boyd had stated that her testimony was erroneously reported in a newspaper (TF-160), and that she did not testify that she fed steak to the employees (TF-161). The Government did not call Janet Boyd to first confront her with the purported extrajudicial inconsistent statement.

During hearing on post-trial motions the District Judge granted defense motions for a new trial on certain counts and stated that:

> ". . . it's my belief that the testimony was improperly received by the Court and that the objection should have been sustained."
>
> (Hearing on Post Trial Motions, 35)

However the District Judge held that the error did not prejudice all Counts but only those dealing with allegations of peonage. (Hearing on Post Trial Motions, p. 35-36).

Several of the alleged victims had extensive criminal records, including violations more than ten years prior to trial. The District Court denied Defendants' request to place these convictions into evidence, relying on Rule 609 of Federal Rules of Evidence. (TB-35) However, in instructing the jury, the District Judge stated that:

> In determining whether a particular person reasonably believed that he had no way to avoid continued service, you should consider the method or form of compulsion exercised against him, if any, in relation to his *particular station in life, including his physical and mental condition, his age, education, training, experience, and intelligence,* and also any reasonable opportunities he may have had to escape. (Emphasis added) (TG-104, 105)

The United States Court of Appeals for the Fifth Circuit affirmed the convictions and in doing so stated that a defendant is guilty of holding a person to involuntary servitude if the defendant has placed him in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape. Petitioners would assert that this holding is contrary to established law and in particular, the holding of the Second Circuit in *United States v. Shackney*, 333 F.2d 475 (2nd Cir. 1964).

Petitioners contend that the United States Court of Appeals for the Fifth Circuit made substantial error as to whether or not certain objections were made and preserved at trial. Such error goes to the very heart of the appellate process and is such a departure from the accepted and usual

course of judicial proceedings so as to call for an exercise of the Supreme Court's power of supervision.

Petitioners further assert that the United States Court of Appeals for the Fifth Circuit interpreted the Federal Rules of Evidence in a manner inconsistent with previous decisions of the Supreme Court of the United States.

WHY THE WRIT SHOULD BE GRANTED

1. CAN A DEFENDANT BE CONVICTED OF HOLDING A PERSON TO INVOLUNTARY SERVITUDE IF THE VICTIM HAS ADMITTED OPPORTUNITIES TO LEAVE BUT CLAIMS HE IS AFRAID TO DO SO?

In the leading case of *United States v. Shackney*, 333 F.2d 475, (2nd Cir. 1964), Judge Friendly speaking for the Second Circuit held that an employer's threat of deportation was insufficient to support a finding of "involuntary servitude" where easy methods of escape were available to the alleged victims.

The Court said of the elements of the crime of involuntary servitude:

> But a holding in involuntary servitude means to us action by the master causing the servant to have, or to believe he has, no way to avoid continued service or confinement, in Mr. Justice Harlan's language, "superior and overpowering force, constantly present and threatening," not a situation where the servant knows he has a choice between continued service and freedom,

> even if the master has led him to believe that the choice may entail consequences that are exceedingly bad.
>
> *333 F.2d 475,486*

The evidence presented at trial from the Government's own witnesses clearly shows that the alleged victims had enumerable ways to avoid continued service, that no superior and overpowering force was "constantly present", that the workers had a clear choice between "continued service and freedom" as well as countless reasonable methods of escape. The Government's witnesses testified to the following opportunities to escape:

1. No armed guards, fences, gates, or locks were present either at the North Carolina or Florida apartments (T-47; TB-60; TB-126; TC-66).

2. The Lake Wales apartments were located adjacent to a well attended church (TD-57), in a populated residential area (TB-217) where third parties could be easily contacted.

3. That the Lake Wales apartments were visited by Florida Department of Commerce personnel on several occasions during the time in question (TA-200-257) and none of these third parties was asked for help.

4. That the workers at the Lake Wales facility would often visit the local grocery store in Lake Wales where the workers could freely walk in and out and around the store during regular customer shopping hours (T-51; T-148; TB-76; TB-219, 226; TC-238). This store is within two or three

blocks of the Lake Wales Police Station.

5. Workers would often go to downtown Lake Wales to mingle with the townspeople (TB-77).

6. Workers and their wives made regular trips to Lake Wales doctors and were left there unattended and would call for someone to pick them up (TC-66).

7. Workers and their wives would often visit the public clinic in Lake Wales (TB-29, 78; TC-143; TC-241).

8. The workers would often pick fruit in large citrus groves where the workers would be spread out throughout the grove area with one foreman present (T-78; TB-71).

9. That a North Carolina state health van would visit the North Carolina facility regularly (TC-145).

10. That the workers stopped at various gas stations and restaurants on the trips to Florida from North Carolina providing easy methods of escape (T-138; TB-64,65; TB-198; TC-152; TC-246).

However, the Fifth Circuit in its opinion stated that:

> ". . . a defendant is guilty of holding a person to involuntary servitude if the defendant has placed him in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape."

Such a holding is clearly contrary to the holding of the

Second Circuit in *Shackney*, supra, wherein the Court stated that involuntary servitude is not a situation where the servant knows he has a choice between continued service and freedom.

Clearly, the Fifth Circuit has rendered a decision in conflict with the decision of another court of appeals on the same matter, ie., whether or not threats or fear alone can constitute involuntary servitude.

2. IS IT PROPER FOR THE GOVERNMENT TO IMPEACH A KEY DEFENSE WITNESS BY USE OF INCONSISTENT HEARSAY STATEMENTS MADE SUBSEQUENT TO TRIAL TESTIMONY, WITHOUT FIRST RECALLING THE WITNESS AND CONFRONTING THE WITNESS WITH THE INCONSISTENT STATEMENT?

Rule 613(b), Federal Rules of Evidence, provides:

> (b) EXTRINSIC EVIDENCE OF PRIOR INCONSISTENT STATEMENT OF WITNESS. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

However, the Government at trial was allowed to call a witness to testify that a key defense witness, subsequent to

her testimony, denied a newspaper account of her testimony that she served steaks to the alleged victims (TF-161). This testimony was admitted over Defendants' timely objection (TF-160).

The significance of this impeachment of a key defense witness who testified to every facet of the case and offered invaluable support to the defense, was evident by the Government's argument to the jury wherein it was stated:

> "Now, you heard Janet Boyd testify here. You heard Janet Boyd testify about the food that she fed those men. Any you heard Janet Boyd adamantly insist on cross examination that she served steaks three times a week. She even identified the kind of steak, T-bone steaks.
>
> And you heard her employer come in here and say that the day after she testified she denied having said that she served steaks.
>
> The credibility of the witnesses, ladies and gentlemen, is for your determination. I submit to you that the testimony of the defense witnesses is simply not credible."
>
> (T-G, 35).

The Fifth Circuit in its opinion stated that Rule 613(b) expressly applies only to prior inconsistent statements and thus the trial judge is free to fashion an evidentiary procedure. The application of the inconsistent statement rule to only prior inconsistent statements is directly contrary to the

case of *Mattox v. United States*, 15 U.S. 327, 15 S.Ct. 237, 39 L.ed. 409 (1895) where this court stated:

> It is insisted, however, that the rule ceases to apply where the witness has died since his testimony was given, and the contradictory statements were either made subsequent to the giving of his testimony, or if made before, were not known to counsel at the time he was examined; that if such contradictory statements be not admitted, the party affected by his testimony is practically at the mercy of the witness; that the rule, requiring a foundation to be laid is, after all, only a matter of form, and ought not to be enforced where it works a manifest hardship upon the party seeking to impeach the witness. The authorities, however, do not recognize this distinction.
>
> *15 U.S. 327, 15 S.Ct. 237, 39 L.ed 409 (1895)*

Additionally, the Second Circuit has recognized in *United States v. Hayutin*, 398 F.2d 944 (2nd Cir. 1968), cert. den. 89 S.Ct. 400, (1968), that the law requires that a witness must be recalled to give him an opportunity to deny his statement attributed to him before a witness can be placed on the stand to testify to inconsistent statements. In the *Hayutin* case the Court pointed out that the counsel had an opportunity to recall the witness in order to give him an opportunity to deny the statement attributed to him. In fact, the Court indicated that the probable reason why the witness was not recalled is that a denial of the inconsistent statement was anticipated.

Rule 613(b) is, of course, necessary in order to protect

a witness from allegations which he has not had an opportunity to rebut. A defense witness can be effectively destroyed if one could, after examination, testify that the witness made an inconsistent statement. The proper procedure, if the Government had evidence of a subsequent inconsistent statement, would have been to have recalled the witness in rebuttal and inquired as to whether or not the subsequent inconsistent statement had been made.

Only after giving the witness the above-referenced opportunity should the impeachment witness be allowed to testify.

The Fifth Circuit's application of Rule 613(b) is in conflict with the position of the Second Circuit in *Hayutin*, supra and with the position of this Court in *Mattox*, supra.

The procedure to be used in criminal trials where the Government seeks to destroy a vital defense witness through hearsay testimony subsequent to the testimony is a matter of great importance which should be resolved by this court.

3. WHERE A MAIN ISSUE IS WHETHER OR NOT AN INDIVIDUAL IS SO INTIMIDATED BY THREATS THAT HIS WILL IS COMPLETELY SUBJUGATED, IS IT ERROR TO EXCLUDE EVIDENCE OF PAST CRIMINAL CONVICTIONS, MORE THAN 10 YEARS OLD?

Several of the victims had extensive criminal records, including violations more than ten years prior to trial. The trial Court denied Defendants' request to place these convictions into evidence, relying on Rule 609 of the Federal Rules of Evidence (TB-35).

In this case, the element of fear was the crux of the Government's case. It was therefore essential for the defense to attack that element and impeach those pretending such fear. This opportunity was denied. The defense was not permitted to inform the jury that these alleged victims were not school-boys but instead life-long hardened criminals who were not intimidated by threats as violence was a way of life to each of them. By not allowing evidence of their past, the defense was stripped of its greatest weapon against allegations that these alleged victims were constantly in fear.

4. DID THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHERE THEIR OPINION REFLECTS CERTAIN OBJECTIONS WERE NOT MADE AT TRIAL AND THE RECORD CLEARLY REFLECTS SUCH OBJECTIONS WERE MADE?

The Fifth Circuit in its opinion of affirmation, on page 1209 stated, concerning the issue of impeachment of a defense witness by use of inconsistent hearsay testimony made subsequent to trial:

> "Because the defendants raised neither objection at trial. . ."

The Court has clearly overlooked Defendants' objections to the Coleman testimony which appears in the transcript as follows:

> "MR. CURTIS: Your Honor, I am going to object. That was not - - I'm objecting on the grounds it would obviously be hearsay. It was my understanding when this witness was proffered to the Court, he was going to be proffered for a specific purpose. And I think he is going well beyond the scope of it, Your Honor, and I respectfully suggest it's not proper at this time or in this form." (TF-159)

* * *

"THE COURT: All right, I'll overrule objection."

(TF-160)

The testimony of Ray Coleman was in fact "not proper at this time or in this form" because the Government failed to recall Janet Boyd to confront her with these accusations prior to allowing Ray Coleman to impeach her credibility.

The District Court in granting Defendants a new trial as to four (4) counts on the basis of the admission of the Coleman testimony clearly recognized that the Defendants had properly and timely objected to the admission of the Coleman testimony (Hearing on Post Trial Motions, 13, 36)

> "THE COURT: Well, let's pass that for a moment. Frankly, I am somewhat dubious now as to whether it was or wasn't hearsay; although I think your other point then may have some force and power to it. That even if it wasn't hearsay and it was merely offered not to prove the truth of the matter asserted, *then it's really not relevant* unless, as you state, there is an issue

as to whether that verbal act had occurred or not occurred.

But let's assume for a moment - - and I have not yet decided - - but assume for a moment that it was error for the Court to have permitted that testimony *over timely objection which was stated, on both grounds.*"

(Hearing on Post Trial Motions, 23,24)

A transcript of the Coleman Testimony, including the objections, was furnished to the District Court prior to his ruling on Defense motions. (Hearing on Post Trial Motions, 29). After the Judge had taken a recess to read the transcript he came back into the courtroom and announced:

". . . the point which I think has merit in the various post trial motions that have been filed in this case is the question concerning the Court's admission *over timely and proper objection* the testimony of the Government rebuttal witness, Mr. Coleman."

(Hearing on Post Trial Motions, 33)

The Court, in its ruling, specifically held the testimony irrelevant and stated that it was improper in form or irregular unless the witness was previously given an opportunity to admit, deny, or explain, the statement. (Hearing on Post Trial Motions, 34)

The District Court clearly considered that the Defendants

raised timely and proper objection to the Coleman testimony on the exact grounds set out in this Court's opinion at page 1209.

Both the record and the statements and actions of the District Court indicate that this Court is in error when it states that "the defendants raised neither objection at trial . . ."

The Court in its opinion of Affirmation on page 1210 stated concerning the ten (10) year conviction issue that:

"Although the defendants attempted to question several government witnesses concerning convictions more than ten years old, the defendants did not apprise the trial judge of any purpose for these questions other than impeachment until they attempted to question the final government witness."

This statement is not correct. The District Court was apprised of the purpose for the questions during the cross examination of the third (3rd) government migrant witness. During a bench conference the following was stated:

"MR EDMUND: Your Honor, may I request the Court to consider that a great many of these convictions may not be considered in terms of impeachment of the witness, but we are spending an awful lot of time here on state of mind and the ability of somebody to be intimidated and whatever. And I would suggest to the Court the number of times this man has been in and out of jail for whatever nature, that he is a hardened crimi-

nal and it would have a great deal to do with his state of mind and his ability to be intimidated. . ."

(TB-36)

Four migrants testified subsequent to the Court being apprised of the reason for the purpose of inquirng into convictions which occurred more than ten (10) years in the past (TB-150; TC-8; TC-99; TC-164)

CONCLUSION

FOR THE FOREGOING REASONS THE PETITION FOR CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari have been served on Walter W. Barnett, Attorney,Department of Justice, Ninth and Pennsylvania Ave., N.W., Washington, D.C. and Solicitor General, Department of Justice, Room 5143, Appellate Section, Washington, D.C., this 16th day of February, 1978.

ROBERT E. PUTERBAUGH

OPINION OF CIRCUIT COURT OF APPEALS

UNITED STATES of America,
Plaintiff-Appellee,

v.

William James BIBBS, Ivory Lee Wilson, and Roscoe Wilson,
Defendants-Appellants

No. 76-4195

United States Court of Appeals,
Fifth Circuit.

Dec. 19, 1977.

Defendants were convicted in the United States District Court for the Middle District of Florida, William Terrell Hodges, J., of holding certain persons to involuntary servitude and they appealed. The Court of Appeals, James C. Hill, Circuit Judge, held that: (1) the evidence was sufficient to sustain the convictions; (2) there was no requirement that a defense witness be confronted with an inconsistent statement made subsequent to her testimony before that statement could be introduced to impeach her testimony, and (3) the district court did not abuse its discretion in excluding evidence of the named victims' and witnesses' criminal convictions more than ten years old.

Affirmed.

1. Slaves 24

In prosecution for involuntary servitude, law takes no account of means of coercion, but various combinations of physical violence and threats of physical violence for escape attempts are sufficient. 18 U.S.C.A. §1584.

2. Slaves 24

Defendant is guilty of holding person to involuntary servitude if defendant has placed him in such fear of physical harm that victim is afraid to leave, regardless of victim's opportunities for escape. 18 U.S.C.A. §1584.

3. Slaves 24

Evidence was sufficient to sustain convictions of holding persons to involuntary servitude. 18 U.S.C.A. § 1584.

4. Criminal Law 338(1)

Trial courts have wide latitude in ruling on evidentiary questions.

5. Criminal Law 1035(10)

In prosecution for holding persons to involuntary servitude, admission of prosecution rebuttal testimony offered to impeach both credibility of key defense witness and her testimony concerning relevant factor of victims' employment was not plain error.

6. Witnesses 389

In order to impeach witness by use of inconsistent statement made subsequent to her testimony at trial, it was not necessary that witness be first recalled and confronted with subsequent inconsistent statement. Federal Rules of Evidence, rule 613(b), 28 U.S.C.A.

7. Witnesses 388(2), 389

Practice of requiring foundation to be laid during cross-examination of witness to be impeached has three objectives: to avoid unfair surprise by giving opposite party opportunity to draw denial or explanation from witness on redirect examination; to give witness himself opportunity to deny or explain apparent discrepancy; and to save time. Federal Rules of Evidence, rule 613(b), 28 U.S.C.A.

8. Criminal Law 1036.1(8)

In prosecution for holding persons to involuntary servitude, in which defendants asserted that district court should have permitted them to introduce evidence concerning victims' and witnesses' criminal convictions more than ten years old because victims' character and condition of life, including their prior criminal activities, were relevant in determining whether they were held to involuntary servitude by threats of beatings and the like, trial judge's refusal to admit evidence of convictions more than ten years old concerning witness who was not held to involuntary servitude was reversible error only if it was plain error affecting substantial rights. Fed. Rules Crim. Proc. rule 52(b), 18 U.S.C.A.

9. Slaves 24
Witnesses 345(1)

In prosecution for holding persons to involuntary servitude, district court did not abuse its discretion in excluding evidence of named victims' and witness' criminal convictions more than ten years old. Federal Rules of Evidence, rule 609(b), 28 U.S.C.A.

Appeals from the United States District Court for the Middle District of Florida.

Before THORNBERRY, Circuit Judge, SKELTON, Senior Judge*, and HILL, Circuit Judge.

JAMES C. HILL, Circuit Judge:

The defendants were convicted of holding certain persons to involuntary servitude in contravention of 18 U.S.C. § 2 and §1584. Defendant Ivory Lee Wilson was convicted of holding Richard Lee Brown, Charles Vonzell Brown, Elliot Johnson, and Thomas Bethea to involuntary servitude. Defendant Roscoe Wilson was convicted of holding Richard Lee Brown and Elliot Johnson to involuntary servitude. Defendant William Bibbs was convicted of holding Richard Lee Brown, Charles Vonzell Brown, and Elliot Johnson to involuntary servitude. On this appeal, the defendants challenge their convictions, claiming that they are based on insufficient evidence; that the trial judge improperly admitted

* Senior Judge of the United States Court of Claims, sitting by designation.

testimony concerning an inconsistent statement made by a defense witness subsequent to her testimony; and that the trial judge improperly excluded evidence of witnesses' and victims' criminal convictions more than ten years old. We hold that these allegations of error are meritless, and we affirm the district court.

Defendant Ivory Lee Wilson was in the agricultural products harvesting business. He negotiated contracts with farmers and agricultural product packing companies in North Carolina and in Florida to harvest their crops. From November 1975 to April 1976, Wilson employed his brother, defendant Roscoe Wilson. Roscoe Wilson employed his own crew and was paid based on the amount of produce it harvested. Defendant William Bibbs also worked for Ivory Lee Wilson as a truck driver, fruit loader, field walker, and work recruiter.

Ivory Lee Wilson required his crews to live in housing that he provided. He charged each crewman $14.00 per week for housing though Wilson's North Carolina employers supplied the crewmen's accommodations free to Wilson and though nine to eleven crewmen were forced to live in a three room apartment owned by Wilson when they worked in Florida. Ivory Lee Wilson required the crewmen to eat at a camp kitchen when they were in North Carolina. He charged each crewman $30.00 per week for meals consisting of sandwiches, grits, beans, pigs knuckles, and bologna. When the crews were in Florida, Wilson permitted them to shop in a local grocery store. Wilson did not permit the crewmen to pay directly for their groceries, however, but rather Wilson paid for the goods and then charged the crewmen for them. The crewmen were required to purchase any liquor they con-

sumed from Wilson, who sold it at what the evidence discloses to have been exorbitant prices. Wilson also charged the crewman for items such as pickers' sacks, gloves, clippers, water, and electricity. Wilson set off all these charges against each crewman's weekly paycheck. About 70% of the crewmen did not earn enough money during at least one week to pay the charges they incurred that week. Ivory Lee Wilson required these crewmen to endorse their entire payroll checks back to him.

In November 1975, defendant Bibbs hired victims Richard Lee Brown and Charles Vonzell Brown in Salisbury, North Carolina, promising them that they would be returned to Salisbury in a few days. The Browns quickly became indebted to Ivory Lee Wilson, and they attempted to leave his employ approximately 9 days after they began working for him. Defendants William Bibbs and Ivory Lee Wilson stopped the Browns with a gun. Wilson threatened to kill them and told them that they could not leave until they paid their debts. When Richard Lee Brown attempted to escape again with victim Elliot Johnson, Roscoe Wilson found them and had Bibbs and another man beat them. Although Brown suffered internal injuries in the beating, Ivory Lee Wilson forced him to work the next morning. Brown rode to the fields with the other workers, including Charles Vonzell Brown, and told them he had been beaten for attempting to escape. The Browns testified that they remained in Ivory Lee Wilson's employ because they feared for their lives.

Victim Elliot Johnson became indebted to Ivory Lee Wilson so soon after beginning work for him that Johnson never received a paycheck. When Johnson was beaten for attempting to escape with Brown, Johnson's arm was fractured and his back was injured. Although Johnson eventually

spent $400.00 in medical fees for these injuries, he went to work the next morning because he believed that he would be killed if he did not. Like Richard Lee Brown, Johnson told the other workers about his beating. Johnson testified that he did not attempt to escape again because he feared he would be physically harmed.

Victim Thomas Bethea was hired to work in North Carolina. Because he became indebted to Ivory Lee Wilson, Wilson threatened to beat him if he did not go to Florida with the crew. Bethea knew that Richard Lee Brown and Elliot Johnson had been beaten for attempting to escape, and he had witnessed Ivory Lee Wilson beat another person. Bethea was prevented from leaving the camp twice, once by defendant Bibbs, and he had been threatened with beatings. Bethea testified that he remained in Ivory Lee Wilson's employ only because he feared that he would be physically harmed if he attempted to leave.

The defendants urge that the district court erred in failing to grant a judgment of acquittal from their convictions. The defendants argue that their convictions are not supported by the evidence because each victim admitted that he had one or more opportunities to avoid contained service with the Wilsons. The defendants' argument is premised on an incorrect interpretation of the elements of involuntary servitude and ignores the standard governing appellate review of a denial of a motion for a judgment of acquittal.

[1,2] The primary purpose for outlawing involuntary servitude was to abolish "all practices whereby subjection having some of the incidents of slavery was legally enforced." *United States v. Shackney*, 333 F.2d 475, 485 (2d Cir. 1964). In a prosecution for involuntary servitude, the law

takes no account of the means of coercion. Various combinations of physical violence and of threats of physical violence for escape attempts are sufficient. *Pierce v. United States*, 146 F.2d 84 (5th Cir. 1944), *cert. denied*, 324 U.S. 873, 65 S.Ct. 1011, 89 L.Ed. 1427 (1945); *Bernal v. United States*, 241 F.339 (5th Cir. 1917), *cert. denied*, 245 U.S. 672, 38 S.Ct. 192, 62 L.Ed. 540 (1918). To hold otherwise would be to ignore reality. During the years slavery existed in this country, slaves often worked in the fields and went into town with little direct supervision, thereby offering them opportunities to escape. Yet it is beyond argument that the slaves were held in involuntary servitude. The slaves' servitude was enforced not only by state law, but also by the fear generated by public punishment of those who attempted to escape. *See generally*, B. Quarles, The Negro in the Making of America (rev. ed. 1970). Therefore, a defendant is guilty of holding a person to involuntary servitude if the defendant has placed him in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape.

[3] This Court must affirm the district court's denial of a motion for acquittal if, "viewing the evidence presented most favorable to the Government, a reasonable-minded jury could accept the relevant and admissible evidence as adequate and sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt." *Sanders v. United States*, 416 F.2d 194, 196 (5th Cir. 1969), *cert. denied*, 397 U.S. 952, 90 S.Ct. 978, 25 L.Ed. 2d 135 (1970); *Weaver v. United States*, 374 F.2d 878, 881 (5th Cir. 1967). In the case on appeal, the Government presented more than sufficient evidence to satisfy this standard. The evidence established that each victim held to involuntary servitude attempted to escape Ivory Lee Wilson's employ on one or more occasions and was prevented from doing so by one or more defendants. Richard Lee Brown and Elliot Johnson were beaten for attempting to escape, and all the victims were threatened with bodily harm if they attempted to escape. Charles Vonzell Brown and Thomas Bethea, the victims who were not beaten, were aware that the defendants had beaten other persons who attempted to escape. Each victim testified that he did not leave Ivory Lee Wilson's employ because he feared that he would be physically harmed by the defendants. Finally, there was ample evidence that Wilson had a motive to keep each victim in his employ, to recoup money expended on them. Therefore, we hold that the defendants' convictions are supported by sufficient evidence.

The defendants next urge that their convictions be reversed because the district court admitted evidence on rebuttal concerning an inconsistent statement made by a defense witness. Defense witness Janet Boyd testified that she served T-bone steaks to the defendants' employees twice a week. Apparently this testimony was published in newspapers. On rebuttal, Raymond Coleman testified that Boyd told him on the morning after her appearance on the witness stand that she had not so testified. The defendants argue that Coleman's testimony was irrelevant and that Boyd should have been confronted with her statement before Coleman was permitted to testify concerning it. Because the defendants raised neither objection at trial, this Court will reverse the district court on the basis of these objections only if the district court's procedure constituted plain error affecting substantial rights. Fed. R. Crim.P. 52(b); *United States v. Garcia*, 531 F.2d 1303, 1307 (5th Cir.)., *cert. denied*, 429 U.S. 941,27S.Ct. 359, 50 L.Ed.2d 311 (1976); *United States*

v. Fendley, 522 F.2d 181, 186 (5th Cir. 1975).

[4,5] Trial courts have wide latitude in ruling on evidentiary questions. *United States v. Partin*, 493 F.2d 750, 759 (5th Cir. 1974); *O'Brien v. United States*, 411 F.2d 522,524 (5th Cir. 1969). In the defendants' reply brief, they refer to Janet Boyd as "a key defense witness" and state that her testimony "offered invaluable support to the defense."[1] The defendants introduced Boyd's testimony pertaining to the steaks to refute the Government's evidence concerning Wilson's exorbitant food charges and concerning the victims' work conditions. Coleman's testimony was offered to impeach both the credibility of this "key defense witness" and her testimony concerning a relevant factor of the victims' employment. Therefore, the trial judge's failure to exclude this evidence sua sponte on the basis of irrelevancy was not plain error.

[6] To support their argument that Boyd should have been recalled before Coleman testified, the defendants rely primarily on Rule 613(b) of the Federal Rules of Evidence, which establishes the procedure for impeachment of a witness by the witness' prior inconsistent statements, and on other authorities concerned with impeachment by prior inconsistent statements. This reliance is misplaced for two reasons. First, Rule 613(b) expressly applies only to prior inconsistent statements. Because the Federal Rules of Evidence do not provide a procedure for impeachment by subsequent inconsistent statements, the trial judge is free to fashion an evidentiary procedure that will "secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of

1. Consolidated Reply Brief of Defendants-Appellants at 5.

evidence to the end that the truth may be ascertained and proceedings justly determined." Fed.R. Evid. 102.[2] *See also* Fed. R.Crim.P. 2. Therefore, the district court was in no way bound by Rule 613(b) or by related authority.

Second, even if Rule 613(b) was applicable, it does not require that impeachment foundation precede the impeaching witness' testimony. Rule 613(b) merely requires that the impeached witness be "afforded an opportunity to explain or deny" the inconsistent statement. The Committee Comments to Rule 613(b) expressly state that the impeached witness' opportunity to deny or explain should not be limited to cross-examination.

[7] The traditional practice of requiring a foundation to be laid during cross-examination of the witness to be impeached had three objectives: (1) to avoid unfair surprise by giving the opposite party an opportunity to draw a denial or an explanation from the witness on redirect examination; (2) to give the witness himself an opportunity to deny or to explain the apparent discrepancy; and (3) to save time. The first and second objectives can be achieved by giving the witness an opportunity to explain or to deny a prior or a subsequent inconsistent statement at any time during the trial. The third objective, to save time, is relevant in the context of impeachment by prior inconsistent statements. The Committee Comments state, however, that even that objective is outweighed by countervailing considerations. Because counsel cannot lay a foundation for impeachment during

2. Rule 102 was designed to allow "expansion [of the Federal Rules of Evidence] by analogy to cover new or unanticipated situations." Statement of Professor Cleary, Reporter for the Advisory Committee, *Hearings on Proposed Rules of Evidence Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary*, 93d Cong., 1st Sess., Serv. 2 at 4 (1973).

cross-examination in the context of impeachment by subsequent inconsistent statements, the objective of saving time has even less significance in that context. *United States v. Barrett*, 539 F.2d 244, 254-56 (1st Cir. 1976); *Strudl v. American Family Mutual Insurance Co.*, 536 F.2d 242, 244-45 (8th Cir. 1976); *Hearings Before the Subcomm. on Criminal Justice on Proposed Rules of Evidence*, 93d Cong., 1st Sess., ser. 2, at 74-75 (Supp. 1973); 3 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 613[02] (1975). The defendants in the case on appeal could have requested that Boyd be permitted to testify in surrebuttal or that their case be reopened. *United States v. Webb*, 533 F.2d 391, 395 (8th Cir. 1976); *United States v. Sadler*, 488 F.2d 434, 435-36 (5th Cir.), *cert. denied*, 417 U.S. 931, 94 S.Ct. 2642, 41 L. Ed. 2d 234 (1974); *United States v. Doe*, 488 F.2d 93, 94 (5th Cir. 1973), *cert. denied*, 416 U.S. 991, 94 S.Ct. 2400, 40 L.Ed. 2d 769 (9174). Therefore, the Government's failure to recall Janet Boyd before introducing evidence concerning her subsequent inconsistent statement was not a reversible error.

[8] The defendants' final argument is that the district court erred by applying Rule 609(b) of the Federal Rules of Evidence to exclude evidence of the named victims' and witnesses' criminal convictions more than ten years old. The defendants argue that the district court should have permitted them to introduce evidence concerning these convictions because a victim's character and condition of life, including his prior criminal activities, are relevant in determining whether that person was held to involuntary servitude by threats of beatings and the like. Although the defendants attempted to question several government witnesses concerning convictions more than ten years old, the defendants did not apprise

the trial judge of any purpose for these questions other than impeachment until they attempted to question the final government witness. Because the defendants were not convicted of holding the final government witness to involuntary servitude, the trial judge's refusal to admit evidence of convictions more than ten years old is reversible error only if it was plain error affecting substantial rights. Fed.R.Crim.P. 52(b); *United States v. Garcia*, 531 F.2d 1303, 1307 (5th Cir.), *cert. denied*, 429 U.S. 941, 97 S.Ct. 359, 50 L.Ed.2d 311 (1976); *United States v. Fendley*, 522 F.2d 181, 186 (5th Cir. 1975).

Rule 609(b) provides that evidence of a conviction is not admissible to impeach a witness if more than ten years have elapsed since the date of the conviction or since the date of the witness' release from confinement for that conviction, whichever is later. Convictions more than ten years old may be admitted, however, if the trial court determines, "in the interests of justice," that the probative value of the convictions outweighs their prejudicial effect.[3] In enacting Rule 609(b), Congress intended that trial judges be extremely cautious in admitting evidence of remote convictions. According to the Senate Judiciary Committee, "convictions over 10 years old will be admitted very rarely and only in exceptional circumstances." S.Rep. No. 1277, 93d Cong., 2d Sess. 4, reprinted in 1974 U.S.Code Cong. & Admin. News, pp. 7051, 7062.

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3. For a conviction more than ten years old to be admissible, the proponent also must give the adverse party advance written notice of his intent to use that evidence. We need not consider this requirement of Rule 609(b) because we uphold the district court's finding that the prejudicial effect of the convictions outweighed their probative value.

[9] The trial court in the case on appeal properly could have determined that the prejudicial effect of the convictions older than ten years outweighed any probative value they might have. It is questionable whether a person convicted of a crime or released from confinement at such a remote time is less frightened by threats of physical harm than a person who has never been convicted of a crime. Additionally, the defendants' attempts to question witnesses as well as named victims concerning convictions more than ten years old indicate that the defendants' original objective at trial was to impeach the Government's witnesses rather than to introduce evidence concerning an essential element of involuntary servitude. Therefore, the trial court's refusal to permit cross-examination concerning convictions more than ten years old was not plain error.

AFFIRMED.

ORDER DENYING PETITION FOR REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 76 - 4195

Filed: Jan. 18, 1978

UNITED STATES OF AMERICA,
Plaintiff-Appellee

versus

WILLIAM JAMES BIBBS, IVORY LEE WILSON
and ROSCOE WILSON,
Defendants-Appellants

Appeals from the United States District Court for the
Middle District of Florida

ON PETITION FOR REHEARING
(January 18, 1978)

Before THORNBERRY, Circuit Judge, SKELTON, Senior Judge*, and HILL, Circuit Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED

ENTERED FOR THE COURT:
S/ James C. Hill
United States Circuit Judge

*Senior Judge of the United States Court of Claims, sitting by designation.